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Successor Receiver

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
GROUP IV LLC; CLEAR SAILING
GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**SIXTH INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESOR RECEIVER, DIAMOND
McCARTHY LLP, MILLER KAPLAN
ARASE LLP AND SCHINNER & SHAIN
THROUGH JUNE 30, 2020**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

1 **I. Relief Requested**

2 Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of
 3 \$43,904.00¹ for services rendered from April 1, 2020 through June 30, 2020, and reimbursement of
 4 expenses in the amount of \$388.39. Diamond McCarthy seeks compensation in the amount of
 5 \$29,398.90² for services rendered from April 1, 2020 through June 30, 2020 and \$919.78 is costs.
 6 Miller Kaplan Arase LLP (“Miller Kaplan”) seeks compensation in the amount of \$16,399.20³ for the
 7 period through June 30, 2020. Schinner & Shain seeks compensation in the amount of \$900.00 for the
 8 period from April 1, 2020 through June 30, 2020. This motion is supported by the Declarations of the
 9 Receiver, Christopher Sullivan, Julia Damasco and Fred Koenen.

10 The Receiver has conferred with counsel for the Securities and Exchange Commission
 11 (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the
 12 Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of
 13 judgment against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

14 **II. Previous Fee Motions**

15 This is the sixth interim fee motion by the Receiver and her counsel. Fees and expenses have
 16 previously been granted as follows:

17 Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33;
 18 Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees were subject to 20% hold back).

19 Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of
 20 \$185.93; Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees were subject to 20%
 21 hold back).

22 Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and
 23 costs of \$542.73; Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees were subject to
 24 20% hold back).

25 ¹ The Receiver has agreed to a holdback of 20% of this amount and therefore request authority to
 26 pay \$35,123.20.

27 ² Diamond McCarthy has agreed to a holdback of 20% of this amount and therefore requests
 28 authority to pay \$23,519.12 at this time.

29 ³ Miller Kaplan has agreed to a holdback of 20% of this amount and therefore requests authority to
 30 pay \$13,199.36 at this time.

1 Order on Fourth Interim Motion (Dkt. No. 567): Receiver's fees in the amount of \$50,187.30
 2 (subject to 30% hold back) and costs of \$27.00; Diamond McCarthy's fees of \$12,550.00 (subject to
 3 30% holdback); Miller Kaplan fees of \$42,465.60 (subject to 20% holdback); Schinner & Shain fees
 4 of \$5,044.96 (subject to 20% holdback). The Receiver has paid the amounts authorized for payment,
 5 net of the holdbacks.

6 Order on the Fifth Interim Motion (Dkt No. 615): Receiver's fees in the amount of \$75,058.00
 7 (subject to 20% hold back) and costs of \$145.00; Diamond McCarthy's fees of \$32,454.00 (subject to
 8 20% holdback); Schinner & Shain fees of \$2,450.00 and costs of \$622.06. The Receiver has paid the
 9 amounts authorized for payment, net of the holdbacks.

10 As of June 30, 2020, the Receiver was currently holding free and clear cash of \$298,217,
 11 excluding the Anne Bivona funds. Since June 30, 2020, the Receiver has begun implementing the Plan
 12 and has sold stocks generating total cash proceeds of \$3,858,338.35, of which \$2,551,789.00 is for the
 13 Plan Fund available to pay administrative claims.⁴

14 III. Case Status

15 The Court approved a distribution plan in the case at the hearing on May 13, 2020. The
 16 Receiver began taking the steps necessary to implement the Plan, including preparing distribution
 17 schedules and communicating with investors regarding their account information. The claims
 18 administration process was completed and the Receiver worked with her tax advisor to address the
 19 proper manner of calculating the sales and distributions of the publicly traded securities to allow
 20 the Receiver to proceed with implementation of the Plan. The Receiver filed a motion to approve
 21 the distribution schedules, which was served on all investors scheduled to receive a distribution of
 22 publicly traded securities..

23 As of July 31, 2020, the receivership estate presently has approximately \$203,828 in cash
 24 on hand in a checking account, \$94,390 in the money market account, \$502,408 in the segregated
 25 Anna Bivona funds, \$2,551,789.00 in the Plan Fund, and \$1,306,549.35 in the Tax Holding
 26 Account. There are known accrued expenses and unpaid expenses of \$93,500.27 through June 30,
 27 2020 and holdbacks of \$241,055.18. Attached to the Declaration of the Receiver as Exhibit "1" is a

⁴ This amount is exclusive of the segregated Anne Bivona disgorgement funds.

1 financial summary showing the cash status of the estate as of June 30, 2020. Funds in the amount
 2 of \$114,396.49 representing second quarter fees and expenses were disbursed during this period.
 3 The Standardized Fund Accounting Report required by the SEC for the second quarter 2020 is
 4 attached to the Receiver's Declaration as Exhibit "2."

5 **IV. The Receiver's Fee Request**

6 As detailed in the Declaration of the Receiver, pursuant to the Receiver's proposal for her
 7 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has
 8 established separate billing categories for services provided to address legal issues (2598-11- Case
 9 Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and
 10 Recovery; 2598-16- Plan Implementation) and a separate category for administrative services
 11 provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver
 12 has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of
 13 the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby
 14 generating significant savings to the estate. The billing statements itemizing the services provided
 15 and expenses incurred are contained in Exhibit "3" attached to the Declaration of the Receiver. The
 16 amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	11.40	\$4,845.00	
Administrative Services	19.30	\$2,509.00	
Claims Administration/Objection	2.50	\$1,062.50	
Asset Analysis and Recovery	19.10	\$8,117.50	
Plan Implementation	64.40	\$27,370.00	
Expenses			\$388.39
TOTAL		\$43,904.00	\$388.39

25 **V. Diamond McCarthy's Fee Request**

26 As detailed in the Declaration of Christopher Sullivan, Diamond McCarthy has established
 27 the following billing categories for tasks performed from April 1, 2020 through June 30, 2020
 28 (2622-11- Case Administration; 2622-13- Plan Implementation; 2622-15 Asset Analysis and

1 Recovery). The billing statements itemizing the services provided and expenses incurred are
 2 attached as Exhibit “4” to the Sullivan Declaration. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	8.60	\$3,355.80	n/a
Plan Implementation	28.50	\$11,900.00	n/a
Asset Analysis and Recovery	37.50	\$14,143.10	n/a
Expenses			\$919.78
TOTAL		\$29,398.90	\$919.78

8 VI. Miller Kaplan Fee Request

9 As detailed in the Declaration of Julia Damasco, Miller Kaplan has incurred \$16,399.20 in
 10 fees in connection with its tax advisor services from January 1, 2020 through June 30, 2020, which
 11 fees are described in the detailed billing statements are attached as Exhibit “5” to the Damasco
 12 Declaration. The Receiver proposes to pay Miller Kaplan \$13,119.36, and 20% (\$3,279.84) shall
 13 be held back subject to further Court approval. The services performed by Miller Kaplan were
 14 necessary in obtaining court approval of a plan.

15 VII. Schinner & Shain Fee Request

16 Attached as Exhibit “6” to the Declaration of Fred Koenen are the billing statements
 17 itemizing the amounts owed and services performed by Schinner & Shain from April 1, 2020
 18 through June 30, 2020. Schinner & Shain performed services for a total of \$900.00. The Receiver
 19 proposes to pay Schinner & Shain the full amount of \$900.00. Schinner & Shain provided
 20 necessary and beneficial securities law services to the Receiver.

21 **WHEREFORE**, the Receiver seeks entry of an order granting this motion in all respects.
 22 Dated: August 27, 2020

23 By: /s/Kathy Bazoian Phelps
 24 Kathy Bazoian Phelps, Receiver